

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 WILLIE J. SMITH, JR.,)

4 Petitioner,)

2:08-cv-1552-GMN-VCF

5 vs.)

ORDER

6 BRIAN WILLIAMS, *et al.*,)

7 Respondents.)

8
9 This action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254,
10 by a Nevada state prisoner.

11 Petitioner has filed a motion for reconsideration. (ECF No. 42). Where a ruling has resulted
12 in final judgment or order, a motion for reconsideration may be construed either as a motion to alter
13 or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), or as a motion for relief from
14 judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J Multnomah County v. AC&S, Inc.*, 5
15 F.3d 1255, 1262 (9th Cir. 1993), *cert. denied* 512 U.S. 1236 (1994). Under Fed. R. Civ. P. 60(b) the
16 court may relieve a party from a final judgment or order for the following reasons:

17 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
18 discovered evidence which by due diligence could not have been
19 discovered in time to move for a new trial under Rule 59(b); (3) fraud
20 (whether heretofore denominated intrinsic or extrinsic),
21 misrepresentation, or other misconduct of an adverse party; (4) the
22 judgment is void; (5) the judgment has been satisfied, released, or
discharged, or a prior judgment upon which it is based has been reversed
or otherwise vacated, or it is no longer equitable that the judgment should
have prospective application; or (6) any other reason justifying relief from
the operation of the judgment.

23 Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick*
24 *Garin Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider,
25 a party must set forth facts or law of a strongly convincing nature to induce the court to reverse its
26 prior decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal.

1 1986), *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9th Cir. 1987). Rule 59(e) of
2 the Federal Rules of Civil Procedure provides that any "motion to alter or amend a judgment shall be
3 filed no later than 28 days after entry of the judgment." Furthermore, a motion under Fed. R. Civ. P.
4 59(e) "should not be granted, absent highly unusual circumstances, unless the district court is
5 presented with newly discovered evidence, committed clear error, or if there is an intervening change
6 in the controlling law." *Herbst v. Cook*, 260 F.3d 1039, 1044 (9th Cir. 2001), *quoting McDowell v.*
7 *Calderon*, 197 F.3d 1253, 1255 (9th Cir. 1999). Federal courts have determined that there are four
8 grounds for granting a Rule 59(e) motion: (1) the motion is necessary to correct manifest errors of
9 law or fact upon which the judgment is based; (2) the moving party presents newly discovered or
10 previously unavailable evidence; (3) the motion is necessary to prevent manifest injustice; or (4)
11 there is an intervening change in controlling law. *Turner v. Burlington Northern Santa Fe R. Co.*,
12 338 F.3d 1058 (9th Cir. 2003).

13 In the instant case, petitioner asks this Court to review previously entered orders on the basis
14 that this action was formerly assigned to the Honorable Robert C. Jones, and has been reassigned to
15 the undersigned District Judge. Petitioner appears to challenge this Court's prior order dismissing
16 several grounds of the petition. (ECF No. 29). Petitioner's motion presents arguments that were
17 previously considered and rejected. (*See* ECF No. 29). In his motion, petitioner has not identified
18 any mistake, intervening change in controlling law, or other factor that would require altering the
19 orders previously entered in this case. Petitioner has not shown that manifest injustice resulted from
20 the prior orders entered in this case. Petitioner also has not presented newly discovered or previously
21 unavailable evidence. Petitioner has failed to make an adequate showing under either Rule 59(e) or
22 Rule 60(b) to justify granting his motion for reconsideration.

23 **IT IS THEREFORE ORDERED** that petitioner's motion for reconsideration (ECF No. 42)
24 is **DENIED**.

25 Dated this 15th day of November, 2011.

26 

Gloria M. Navarro
United States District Judge